

**KyannKalin**, OSB No. 060754  
kyann@stutheitkalin.com  
**Peter Stutheit**, OSB No. 061248  
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Stutheit Kalin LLC  
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Portland, Oregon 97204  
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Attorneys for Plaintiff Kay Ekeya

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

KAY EKEYA,

Plaintiff,

v.

SHRINER'S HOSPITAL FOR CHILDREN, a  
Colorado Non-Profit Corporation, and JOHN  
CRAIG PATCHIN, an individual

Defendants.

Case No. 3:17-cv-00195-SI

DECLARATION OF KYANN C. KALIN  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR ATTORNEYS' FEES

I, Kyann C. Kalin, under penalty of perjury, swear and say that:

1. I am licensed to practice law in the State of Oregon and am a partner in the law firm of Stutheit Kalin LLC, attorneys of record for Plaintiff Kay Ekeya. If called to testify as to the matters set forth herein, I could and would do so competently.

2. On the morning of July 21, 2017, I emailed counsel for Defendant, John Kreutzer, to notify him of the total fees I would be seeking in conjunction with this Motion and to inquire whether Defendant would oppose this request. To date, I have not received a response from Mr.

Kreutzer.

3. I spent a total of 39.8 hours in conjunction with the Plaintiff's Motion to Remand, Defendant's Motion to Dismiss and Plaintiff's Motion for Attorney's Fees. Attached hereto as Exhibit A is a true and correct copy of my detailed time records for these motions.

4. I am not seeking fees for the 3.3 hours billed on July 6, 2017 for researching the issue of whether the fraudulent joinder doctrine creates an exception to the forum defendant rule in a circumstance where the forum defendant is diverse and Plaintiff is not a resident of the forum state. I am exercise my billing judgment to eliminate this time because I ultimately elected not to file a supplemental brief on this issue. I am also electing not to seek fees for the 0.3 hours I spent conferring with my client about the status of the case. This entry is also on July 6, 2017.

5. After excising the 3.6 hours described in Paragraph 4, my total time incurred in conjunction with the Motion to Remand, Motion to Dismiss and this Motion for Attorneys' Fees is 36.5 hours. This is the time for which Plaintiff is seeking her attorneys' fees.

6. After Mr. Kreutzer informed me that he was planning to file a Motion to Dismiss, I informed him that I was going to file a Motion to Remand and suggested that he postpone the Motion to Dismiss until after resolution of the remand motion. Defendant declined this offer and elected to pursue the Motion to Dismiss. A copy of my February 23, 2017 email to Mr. Kreutzer confirming this offer is attached hereto as Exhibit B.

7. I graduated from the University of California at Berkeley School of Law (Boalt Hall) in 2000. I have been a member of the California State Bar for 17 years and a member of the Oregon State Bar since 2006. From 2000 to 2008 I was an attorney for Perkins Coie LLP in its Menlo Park, California and San Francisco, California offices. Beginning in approximately

2003, my practice focused almost exclusively on employment litigation including defending both individual harassment, discrimination and retaliation claims and class action wage and hour and discrimination claims. From 2008 until 2013, I was of counsel for The Ongaro Law Firm, an employment litigation boutique located in San Francisco, California. My practice at The Ongaro Law Firm focused exclusively on employment litigation, including defending both individual claims for discrimination, sexual harassment and retaliation as well as multi-million dollar wage and hour class actions. In the fall of 2013, I was a founding partner of Stutheit Kalin LLC, a Portland law firm focused on representing employers and employees in individual cases and class actions. In this capacity, I have successfully represented dozens of individual employees in their claims for employment discrimination, sexual harassment and retaliation as well as representing both individuals and plaintiff classes in wage and hour claims.

8. Attached as Exhibit C is a true and correct copy of the Morones Survey of Commercial Litigation Fees, updated as of January 1, 2014.

I hereby declare, under the laws of the United States, that the above statements are true to the best of my knowledge and belief, and that I understand that this declaration is made for use as evidence in court and is subject to penalty of perjury.

Executed this 23rd day of July, 2017 in Portland, Oregon.

  
\_\_\_\_\_  
KYANN C. KALIN

## **EXHIBIT A**

Jul 21, 2017  
Invoice # 2451

**Stutheit Kalin LLC**  
308 SW First Avenue, Suite 325  
Portland, OR 97204  
www.portlandemploymentattorney.com

Invoice for  
Kay Ekeya  
717 NW 120th Street  
Vancouver WA 98685

## Statement

In reference to  
adv Shriners Hospital

### professional services

			Hrs/Rate	Subtotal
Feb 6, 2017	Kyann Kalin	Review Notice of Removal and supporting documents; strategize with P. Stutheit regarding same	00:48 \$350.00	\$280.00
Feb 9, 2017	Kyann Kalin	Telephone conference with K. Ekeya regarding removal and documents related to termination decision	00:24 \$350.00	\$140.00
Feb 14, 2017	Kyann Kalin	Review case law regarding remand based on fraudulently joined individual defendant and aiding and abetting oneself	00:48 \$350.00	\$280.00
Feb 16, 2017	Kyann Kalin	Receive voicemail from J. Kreutzer requesting voluntary dismissal of Defendant Patchin; confer with P. Stutheit regarding same	00:18 \$350.00	\$105.00
Feb 17, 2017	Kyann Kalin	Prepare email to J. Kreutzer responding to request to voluntarily dismiss Defendant Patchin (0.1); begin drafting Motion to Remand (1.8)	01:54 \$350.00	\$665.00
Feb 21, 2017	Kyann Kalin	Research collecting cases on fraudulent joinder of aider and abettor under Oregon state and federal law; review and analyze same for Motion to Remand	02:18 \$350.00	\$805.00

Jul 21, 2017  
Invoice # 2451

**Stutheit Kalin LLC**  
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			Hrs/Rate	Subtotal
Feb 22, 2017	Kyann Kalin	Telephone conference with J. Kreutzer regarding timing of Motion to Dismiss and Motion to Remand (0.1); review email from colleague outlining status of aiding and abetting claims in Oregon state appellate courts and arguments to support remand motion (0.4)	00:30 \$350.00	\$175.00
Feb 23, 2017	Kyann Kalin	Prepare email to J. Kreutzer regarding position on timing of Motion to Dismiss (0.1); draft Motion to Remand (2.1)	02:12 \$350.00	\$770.00
Feb 24, 2017	Kyann Kalin	Receive voicemail from J. Kreutzer regarding plan to file Motion to Dismiss before Motion to Remand (0.1); prepare Motion to Remand (1.6)	01:42 \$350.00	\$595.00
Feb 27, 2017	Kyann Kalin	Review Motion to Dismiss (0.2); review K. Ekeya personnel file for documents supporting remand motion & opposition to Motion to Dismiss (0.5); Draft Motion to Remand (2.5); telephone call to K. Ekeya regarding facts relevant to Motion to Remand and opposing Motion to Dismiss (0.3)	03:30 \$350.00	\$1,225.00
Mar 3, 2017	Kyann Kalin	Research regarding propriety of Motion to dismiss while Motion to Remand pending (0.6); review, revise and finalize Motion to Remand (1.4); prepare Declaration of K. Kalin in Support of same (0.4)	02:24 \$350.00	\$840.00
Mar 10, 2017	Kyann Kalin	Prepare Opposition to Motion to Dismiss	05:24 \$350.00	\$1,890.00
Mar 17, 2017	Kyann Kalin	Telephone conference with J. Kreutzer regarding request for extension to oppose Motion to Remand	00:06 \$350.00	\$35.00
Mar 20, 2017	Kyann Kalin	Review and evaluate response to Motion to Remand and declarations in support of same	00:30 \$350.00	\$175.00
Mar 27, 2017	Kyann Kalin	Draft Reply in Support of Motion to Remand	02:12 \$350.00	\$770.00
Mar 29, 2017	Kyann Kalin	Draft Reply in Support of Motion to Remand	02:54	\$1,015.00

Jul 21, 2017  
Invoice # 2451

**Stutheit Kalin LLC**  
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www.portlandemploymentattorney.com

			Hrs/Rate	Subtotal
			\$350.00	
Mar 31, 2017	Kyann Kalin	Review, revise and finalize Reply in Support of Motion to Remand	00:48 \$350.00	\$280.00
Jun 2, 2017	Kyann Kalin	Exchange emails with J. Kreutzer regarding LR 83-13 letter to court regarding status of pending motions	00:06 \$350.00	\$35.00
Jun 5, 2017	Kyann Kalin	Review draft L.R. 83-13 letter and prepare email to J. Kreutzer approving same	00:06 \$350.00	\$35.00
Jun 19, 2017	Kyann Kalin	Exchange emails with Ms. Austad regarding scheduling hearing on Motion to Dismiss and Motion to Remand	00:06 \$350.00	\$35.00
Jun 29, 2017	Kyann Kalin	Prepare for hearing on Motion to Dismiss and Motion for Remand	02:06 \$350.00	\$735.00
Jun 30, 2017	Kyann Kalin	Prepare for and attend hearing on Motion to Dismiss and Motion to Remand	02:18 \$350.00	\$805.00
Jul 6, 2017	Kyann Kalin	Telephone call with K. Ekeya regarding status of case	00:18 \$350.00	\$105.00
Jul 6, 2017	Kyann Kalin	Research regarding supplemental brief on forum defendant/ fraudulent joinder issue	03:18 \$350.00	\$1,155.00
Jul 12, 2017	Kyann Kalin	Research motions for attorneys' fees including reasonable rates and procedural requirements for motion	01:18 \$350.00	\$455.00
Jul 19, 2017	Kyann Kalin	Prepare Motion for Attorneys' Fees and Kalin Declaration in Support of Same	00:48 \$350.00	\$280.00
Jul 21, 2017	Kyann Kalin	Prepare Motion for Attorneys' Fee and Kalin Declaration in Support of Same	00:42 \$350.00	\$245.00
				\$13,930.00

additional charges

			Qty/Price	Subtotal
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Jul 21, 2017  
Invoice # 2451

**Stutheit Kalin LLC**  
308 SW First Avenue, Suite 325  
Portland, OR 97204  
[www.portlandemploymentattorney.com](http://www.portlandemploymentattorney.com)

		Qty/Price	Subtotal
No Data			



		Invoice Subtotal	\$13,930.00
		Total	<b>\$13,930.00</b>



# staff time

	Hours	Rate	Subtotal
Kyann Kalin	39:48	\$350.00	\$13,930.00

## **EXHIBIT B**

**From:** Kyann Kalin kyann@stutheitkalin.com  
**Subject:** Ekeya v. Shriners  
**Date:** February 23, 2017 at 9:55 PM  
**To:** John M. Kreutzer JKreutzer@smithfreed.com

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John,

I'm just following up on our phone call of yesterday to find out your position on postponing Shriners' responsive pleading until after the Motion to Remand is filed.

Thanks,  
Kyann

Kyann Kalin  
**STUTHEIT KALIN LLC**  
308 SW First Avenue, Suite 325  
Portland, OR 97204  
direct: 971.285.7578 | fax: 503.715.5670  
[kyann@stutheitkalin.com](mailto:kyann@stutheitkalin.com)

## **EXHIBIT C**

**MORONES SURVEY**  
— OF —  
**COMMERCIAL  
LITIGATION FEES**

Portland, Oregon

2014 Update

625 SW Broadway, Suite 200 | Portland, OR 97205 | P 503.223.5168 | F 503.223.5179

**[moronesanalytics.com](http://moronesanalytics.com)**

# MORONES SURVEY OF COMMERCIAL LITIGATION FEES

Portland, Oregon

## 2014 Summary Report

		2014	2012	2010	2008	2006	06-14 CAGR
Number of participating firms		19	18	15	19	22	na
Number of reported litigation partners/shareholders		179	176	162	187	160	na
Number of reported litigation attorneys		297	306	280	313	339	na
30+ yrs experience [Bar year <= 1984 for 2014] <sup>a</sup>	AVE	\$485	\$448	\$430	\$404	\$367	3.5%
	MED	\$480	\$450	\$433	\$400	\$370	3.3%
20- 29 yrs experience [Bar years 1985- 1994 for 2014] <sup>a</sup>	AVE	\$433	\$412	\$392	\$360	\$333	3.3%
	MED	\$428	\$400	\$390	\$358	\$335	3.1%
10- 19 yrs experience [Bar years 1995- 2004 for 2014] <sup>a</sup>	AVE	\$371	\$346	\$332	\$316	\$291	3.1%
	MED	\$350	\$350	\$325	\$315	\$295	2.2%
0- 9 yrs experience [Bar years >= 2005 for 2014] <sup>a</sup>	AVE	\$283	\$269	\$253	\$240	\$217	3.4%
	MED	\$283	\$250	\$243	\$238	\$210	3.8%
15 attorneys with highest hourly rates	AVE	\$621	\$569	\$525	\$486	\$448	4.2%
	MED	\$615	\$550	\$510	\$475	\$450	4.0%
Percent of commercial litigation revenues derived from hourly billings (versus contingent or flat fee)	AVE	93%	95%	91%	89%	87%	na
	MED	96%	99%	97%	95%	96%	na

Note

a. In order to reduce the impact of any outliers, two data points from each year of experience category, the highest and lowest rates reported, have been removed from calculated average and median survey results.

Fees effective January 1 of 2014, 2012, 2010, 2008 and 2006

# MORONES SURVEY OF COMMERCIAL LITIGATION FEES

Portland, Oregon

## 2014 Update Survey Methodology

In March of 2002, Daniel H. Skerritt and David B. Markowitz commissioned Serena Morones, CPA to conduct a survey of commercial litigation attorney fee rates in Portland, Oregon.

They commissioned the survey for the purpose of developing accurate market data to support their frequent expert testimony in attorney fee disputes. They previously suffered from a lack of complete, empirical market data to use in fee disputes.

They defined their relevant market as each law firm located in the metro Portland area with more than five attorneys specializing in commercial litigation. They defined "specializing" as spending more than 50% of their time in the practice of commercial litigation.

To conduct the survey, Ms. Morones identifies the designated market by reviewing the Oregon State Bar membership directory and conducting internet searches to identify all firms located in the Portland Metro area. She then reviewed each Portland area firm's web site to determine if the firm advertised the practice of commercial litigation. If the firm did advertise commercial litigation, she counted the number of attorney biographies that described commercial litigation as a practice area of the attorney. If the firm advertised at least five attorneys listing commercial litigation as a practice area, she invited that firm to respond to the survey.

For the 2014 survey update, Ms. Morones identified 29 firms that met the specified criteria and 19 of those firms participated in the survey, reporting data for 297 litigation attorneys.

### **2014 Update Survey Methodology**

**MORONES SURVEY**  
OF  
**COMMERCIAL  
LITIGATION FEES**  
Portland, Oregon

**2014  
Publication Policy**

Serena Morones, CPA has conducted a survey of Portland commercial litigation fees, as of January 1, 2014, and will keep all individual survey responses confidential. Individual attorney rates will not be disclosed to any other person. Neither David Markowitz nor Daniel Skerritt, the attorneys commissioning the survey, will have access to the confidential responses.

The individual responses have been entered into a database and a summary report has been distributed to survey participants. There is no charge to survey participants for the summary report. The summary report will disclose average and median fees by years of experience. In order to comply with FTC guidelines for price surveys, the survey will report all statistics in averages with no fewer than 5 data points.

In addition to publishing a summary report, Serena Morones, CPA will make statistical data available for use in fee dispute claims. Any firm engaged in a fee dispute claim may submit the names of at least five attorneys who are deemed comparable to an attorney whose fee is disputed. Ms. Morones will produce a report showing the average and median fee for all five comparable attorneys, not disclosing any individual rate. Alternatively, any expert may request the average and median rate of attorneys in the database by comparable bar year. Any firm wishing to obtain this data must provide the name of the related case to Serena Morones. The cost to obtain comparable data will be billed at an hourly rate for the time required to generate reports, with a minimum charge of \$350.

This survey publication policy has been designed to protect the confidentiality of survey participants, but also to provide sufficiently detailed market data for use in resolving fee disputes.

**2014 Publication Policy**



**MORONES SURVEY**  
OF  
**COMMERCIAL  
LITIGATION FEES**  
Portland, Oregon

**2014 Paralegal Billing Rate Summary Report**

	2014	2012	2010	2008	2006	06 - 14 CAGR
Number of firms submitting paralegal information	15	15	11	11	13	na
Number of paralegals reported	51	58	45	45	69	na
Average billing rate for paralegals reported	\$195	\$173	\$172	\$149	\$139	4.3%
Median billing rate for paralegals reported	\$195	\$170	\$170	\$155	\$140	4.2%

Fees effective January 1 of 2014, 2012, 2010, 2008 and 2006